

In re: GOLDEN PHOENIX TRADING, INC.
PACA Docket No. D-99-0014.
Decision and Order filed August 1, 2000.

Eric Paul, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This disciplinary proceeding, brought under the Perishable Agricultural Commodities Act, 1930, as amended, (7 U.S.C. § 499a *et seq.*) (PACA), was initiated on July 20, 1999, by a complaint alleging that Respondent wilfully, flagrantly, and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly of the purchase prices, in the total amount of \$988,874.49, to three (3) sellers for 71 lots of agricultural commodities which it purchased, received, and accepted in interstate commerce during May and June 1997. The complaint requests a finding that Respondent committed wilful, flagrant, and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)) and an order that the facts and circumstances of its violations be published.

The complaint was served on Respondent by certified mail to Daniel E. Forsh, Trustee in Bankruptcy for Golden Phoenix Trading, Inc. (hereinafter "Trustee") since Respondent had ceased operating and was the debtor in an involuntary Chapter 7 proceeding in the United States Bankruptcy Court for the Western District of Washington, Case No. 98-00381). Respondent filed an answer through its Trustee on August 17, 1999. This answer asserts that Respondent is the subject of a pending Chapter 7 Bankruptcy proceeding and that all actions seeking pecuniary damages from Respondent are automatically stayed. This answer does not acknowledge, admit or deny Respondent's violations of Section 2(4) of the PACA as alleged in the complaint, but states "The Trustee has no concern over or opposition to the application of appropriate police power measures by the Department."

A copy of the complaint was also served on Michael Moore, Vice President, Golden Phoenix Trading, Inc. Mr. Moore filed a Notice of Answer on August 16, 1999. The responding party in this pleading, however, is Michael Moore not Respondent Golden Phoenix Trading, Inc. Michael Moore denies in his answer that he had any knowledge of the violations alleged, that he was ever personally involved in any produce transactions, that he had any knowledge of the financial condition of the firm after approximately August 1996, when negotiations were commenced to buy-out his ownership interest, and asserts that he had resigned as a director in June 1997. Michael Moore attached supporting documentation, including pleadings filed in Bankruptcy Court and United States District Court actions involving PACA trust claims (brought by sellers alleged unpaid in this administrative proceeding), and a United States District Court decision holding that Michael Moore had no personal responsibility or liability for any PACA trust

violations. As relief, Michael Moore has requested that the Administrative Law Judge “NOT find the RESPONDING PARTY, Michael Moore, liable for willfully, or flagrantly, or repeatedly violating any Sections, including Section 2(4) of the PACA (7 U.S.C. § 499b(4)).”¹

Neither answer filed in this proceeding constitutes a denial of the substantive allegations of the complaint by Respondent Golden Phoenix Trading, Inc. The failure of Respondent Golden Phoenix Trading, Inc. to deny or otherwise respond to the substantive allegations of the complaint shall be deemed under section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) to be an admission of said allegations for purposes of this proceeding.

On motion of Complainant for the issuance of a Decision Without Hearing by Reason of Admission of Facts, the following decision is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice governing this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. Golden Phoenix Trading, Inc., herein referred to as Respondent, is a corporation organized and existing under the laws of the State of Washington whose last business addresses were 3131 Elliott Avenue, Suite 770, Seattle, Washington 98121 and 19550 International Boulevard, Suite 330, Sea Tac, Washington 98188.

2. At all times material to this matter, Respondent operated subject to the PACA. PACA license number 951292 was issued to Respondent on May 8, 1995, but terminated on May 8, 1998, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499(a)), because Respondent failed to pay the required annual renewal fee.

3. Since January 12, 1998, Respondent has been a debtor in a proceeding under Chapter 7 of the Bankruptcy Code (11 U.S.C. § 700 *et seq.*), which has been designated Case No. 98-00381, in the United States Bankruptcy Court for the Western District of Washington. The Chapter 7 trustee is Daniel E. Forsch, whose address is 1218 Third Avenue, Suite 1422, Seattle, Washington 98101.

4. Respondent failed to make full payment promptly of \$988,874.49 to three sellers for 71 lots of perishable agricultural commodities which it purchased, received and accepted in interstate commerce during May and June 1997.

Conclusion

¹Michael Moore’s answer was treated by the PACA Branch as a request for a determination of his responsibly connected status by the Chief of the PACA Branch. On March 1, 2000, the Acting Chief, PACA Branch, Fruit and Vegetable Programs notified Michael Moore of his determination that Mr. Moore was not responsibly connected to Golden Phoenix Trading, Inc. during the period of the alleged violations.

Respondent has filed an answer which constitutes an admission of all of the material allegations contained in the complaint. Therefore, the following order is issued.

Order

Respondent is found to have committed wilful, flagrant and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The facts and circumstances of Respondent's violations of the PACA shall be published.

This Decision will become final without further proceedings thirty-five (35) days after service hereof, unless appealed to the Secretary by a party to the proceeding within thirty (30) days after service, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies hereof shall be served on the parties.

[This Decision and Order became final September 15, 2000.-Editor]
